

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) ~~A~~a partner and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) ~~A~~a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) ~~A~~a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(c)(1) The~~the~~ lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(c)(2) The~~the~~ lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer ~~should~~must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b)

32 applies to lawyers who have supervisory authority over the work of a nonlawyer.  
33 Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct  
34 of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged  
35 in by a lawyer. The firm's compliance with paragraph (a) resides with each partner or  
36 other lawyer in the firm with comparable authority.

37 [2a] Utah's Comment [2] differs from the ABA Model Rule's Comment [2]. The  
38 Model Rule Comment suggests the possibility that a firm could be in violation of this  
39 Rule without an individual or group of individuals also being in violation. Utah's  
40 Comment [2] makes clear that, even though the concept of firm discipline is possible, a  
41 firm should not be responsible in the absence of individual culpability for a rule violation.

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